

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

**CLC**

MANDY MOBLEY LI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 5070-19W.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER AND DECISION**

On March 13, 2019, petitioner filed the petition to commence this whistleblower case, pursuant to Internal Revenue Code section 7623,<sup>1</sup> seeking review of a whistleblower determination letter issued to her by respondent.

This case is now before the Court on respondent's motion for summary judgment, filed December 5, 2019. In support, respondent filed a declaration of Layne Carver and exhibits from the Internal Revenue Service (IRS) Whistleblower Office (WBO) administrative file. Petitioner objects to the motion for summary judgment.

**Background**

On December 12, 2018, the WBO received petitioner's Form 211, Application for Award for Original Information. Petitioner alleged that the target taxpayer had filed false claims of rental income, dependent children, alimony paid, and mortgage interest paid for its 2016 and 2017 tax years. The WBO assigned claim number 2019-003513 to petitioner's application.<sup>2</sup>

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<sup>1</sup>Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times. All Rule references are to the Tax Court Rules of Practice and Procedure.

<sup>2</sup>The years at issue are discussed in further detail below.

Petitioner's claim was forwarded to a classifier<sup>3</sup> working under the direction of the WBO.<sup>4</sup> The classifier considered the claim by reviewing the target taxpayer's income tax returns for the tax years 2016 and 2017. After comparing the allegations in the claim to the returns, the classifier concluded that the target taxpayer did not violate the tax laws as alleged and that the claim was speculative. The classifier documented her findings and conclusions on a classification checklist, including her recommendation that the WBO reject petitioner's claim.

The classification checklist was forwarded to the WBO, which accepted the classifier's recommendation and documented the same in an Award Recommendation Memorandum (ARM). The ARM recommended to the supervisory tax examining technician that petitioner's claim be rejected for the same reasons that the initial classifier identified. As a result, the WBO rejected petitioner's claim in a letter entitled "Final Decision Under Section 7623" (Final Determination Letter). The Final Determination Letter informed petitioner that her claim had been rejected because "the information provided was speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws."<sup>5</sup> The WBO formally rejected petitioner's claim with the issuance of the Final Determination Letter on February 8, 2019.

In her objection to the motion for summary judgment, petitioner argues that respondent, among other things, did not give adequate consideration to her allegations regarding the 2015 tax year. The Court ordered respondent to reply to petitioner's objection. Petitioner filed a response opposing respondent's reply.

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<sup>3</sup>A classifier is an IRS employee whose role is "to determine if the information on the Form 211 warrants further review." See Internal Revenue Manual pt. 25.2.1.3.1(2) (Jan. 11, 2018).

<sup>4</sup>See Internal Revenue Manual, pt. 1.1.26.1.3.5 (Jan. 11, 2018); Cline v. Commissioner, T.C. Memo. 2020-35, fn. 3.

<sup>5</sup>The WBO's form letter contained the same "and/or" conjunction that led to a lack of clarity in Lacey v. Commissioner, 153 T.C. \_\_, \_\_ (slip op. at 33) (Nov. 25, 2019). In this case, the record establishes that all of the reasons stated in the letter are justified. So the general lack of clarity attendant to the "and/or" conjunction is inconsequential here. But the Court continues to be concerned that, in a closer case, this form text may create confusion when we review a summary rejection of a whistleblower claim. See Alber v. Commissioner, T.C. Memo. 2020-20, at \*8-9 n.5.

The Court has reviewed both parties' filings and the record, and has concluded that petitioner did not provide information that adequately substantiated a violation of the internal revenue laws for the 2015 tax year. Accordingly, the Court concludes that the WBO properly performed its evaluative function regarding the 2015 tax year.

## Discussion

### I. Summary Judgment

Summary judgment serves to “expedite litigation and avoid unnecessary and expensive trials.” Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988).<sup>6</sup> In deciding whether to grant summary judgment, we draw factual inferences in the light most favorable to the nonmoving party. Id. at 520.

### II. Standard and Scope of Review

The Secretary is obligated to pay whistleblower awards if certain statutory requirements are met. See sec. 7623(b); 26 C.F.R. sec. 301.7623-1(c)(4), Proced. & Admin. Regs. Under section 7623(b)(4), the Court has jurisdiction to review any determination regarding an award under paragraph (1), (2), or (3). See Cooper v. Commissioner, 135 T.C. 70 (2010).

Pursuant to its jurisdiction, the Court reviews the decision of the WBO with respect to an award, including the denial of a whistleblower claim. Cooper v. Commissioner, 135 T.C. at 75. We review the WBO's determination for abuse of discretion, and the scope of our review is generally limited to the administrative record. Kasper v. Commissioner, 150 T.C. 8, 20-23 (2018). The Court will decide if the WBO's actions were arbitrary, capricious, or without sound basis in fact or law. Murphy v. Commissioner, 125 T.C. 301, 320 (2005), aff'd, 469 F.3d 27 (1st Cir. 2006). However, “Congress has not conferred on the Tax Court authority to direct the IRS to commence or continue an audit \* \* \* nor authority to direct collection.” See Lacey v. Commissioner, 153 T.C. at \_\_\_\_ (slip op. at 33). If the IRS decides not to proceed with an action with respect to the taxpayer(s) to whom

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<sup>6</sup>Under its current Rules and jurisprudence, the Court may grant summary judgment when there is no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

the whistleblower claim relates, the Tax Court does not review that decision. Id. at \_\_\_ (slip op. at 35).

### III. Analysis

Pursuant to section 7623, the WBO is charged with performing the initial evaluation of whistleblower claims to determine whether they meet the minimum standards for an award. See 26 C.F.R. sec. 301.7623-1(c)(4). The threshold criteria by which the WBO evaluates a claim's potential eligibility for an award include that the claim:

- “contain[s] specific \* \* \* information”;
- “contain[s] \* \* \* credible information”;
- provides “information that the whistleblower believes will lead to collected [tax] proceeds”;
- reports “fail[ure] to comply with the internal revenue laws”;
- “identif[ies] the person(s) believed to have failed to comply with the internal revenue laws”;
- “provide[s] substantive information, including all available documentation”; and
- does not “provide speculative information”.

Lacey v. Commissioner, 153 T.C. at \_\_\_ (slip op. at 24) (quoting 26 C.F.R. sec. 301.7623-1(c)(1),(4)).

The administrative record shows that the WBO received petitioner's claim, evaluated its contents, and considered its allegations. The classification checklist completed by the classifier shows that she reviewed petitioner's information, performed research, and concluded that no violation of tax laws occurred as alleged by petitioner.<sup>7</sup> The classifier also concluded that the claim was speculative. Accordingly, the classifier recommended rejection of the claim on these grounds.<sup>8</sup>

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<sup>7</sup>See 26 C.F.R. sec. 301.7623-1(c).

<sup>8</sup>See 26 C.F.R. sec. 301.7623-3(b)(3).

The administrative record also shows that the WBO received the classifier's recommendation and concurred with it. The WBO, in turn, prepared an ARM which recommended rejection of petitioner's claim. Pursuant to the initial classifier's recommendation and the ARM, the WBO rejected the claim on the basis stated in the Final Determination Letter that "the information provided was speculative and/or did not provide specific or credible information regarding tax underpayments or violations of internal revenue laws."<sup>9</sup>

The record in this case establishes that the WBO evaluated the information provided by petitioner and decided it did not warrant further investigation by an IRS operating division. In deciding not to forward the claim for any further investigation by an IRS operating division, the WBO evidently performed its evaluative function. Alber v. Commissioner, T.C. Memo. 2020-20. The grounds articulated by the WBO in support of its determination to reject petitioner's claim do not appear to lack a sound basis in fact and law, and the rejection is reasonably supported by the administrative record. Id. Accordingly, the Court holds that the WBO did not abuse its discretion when it rejected petitioner's claim.<sup>10</sup>

As there is no genuine issue as to any material fact, the Court will grant respondent's motion for summary judgment.

Upon due consideration, it is

ORDERED that respondent's Motion For Summary Judgment is granted. It is further

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<sup>9</sup>See 26 C.F.R. sec. 301.7623-3(b)(3).

<sup>10</sup>Respondent also argues that it is entitled to summary judgment because the IRS did not proceed with an administrative or judicial action against the target taxpayer and, as a natural consequence, collected no proceeds. The Court need not address that argument because, as stated above, the Court concludes that the WBO rejected petitioner's claim and did not abuse its discretion in doing so. Lacey v. Commissioner, 153 T.C. at \_\_ (slip op. at 25-26, 33-34).

ORDERED AND DECIDED that respondent's final determination rejecting petitioner's whistleblower claim with respect to claim number 2019-003513, dated February 8, 2019, is sustained.

**(Signed) Courtney D. Jones**  
**Judge**

ENTERED: **APR 06 2020**